

In re Interest of Lee Holley; In re Interest of Jennifer Holley

Caselaw No.

No. 43649, 43650; 209 Neb. 437; 308 N.W.2d 341

Filed on

Friday, July 10, 1981

Summary: Termination of parental rights was proper when both parents suffered from mental illness and deficiencies that rendered them unable to perform parental responsibilities and the condition is likely to continue for a prolonged, indeterminate period. § 43-209 considers the parent's mental illness and deficiency as it relates to their ability to care for their child and allows for judicial discretion in terminating parental rights, rather than requiring termination.

On July 22, 1977 a petition was filed alleging that Lee Holley, born July 20, 1977, was without proper parental care and support at no fault of the parents after his mother was heard stating she did not care if he died and his father put a blanket over his face. After the hearing on the petition, held August 9, 1977, Lee was placed with his paternal grandmother. Evidence was presented at the hearing that Ann Holley, the mother, suffered from delusions and hallucinations and had been hospitalized for severe emotion problems three times over two and a half years. Additionally, that Harold Holley, the father, was emotionally unstable. The court ordered visitation and that the parents be instructed in parenting skills.

On March 8, 1978 Lee was placed with his father's cousin after his grandmother requested a placement change due to her health. Evidence was again presented demonstrating that, due to mental illness, neither parent was capable of providing sufficient care for Lee. The court again ordered visitation, counseling, and cooperation with the department to learn proper child care.

On October 16, 1978 the Holley's gave birth to Jennifer, immediately signing a voluntary foster-care agreement. On January 3, 1979 a petition was filed requesting adjudication and alleging that Jennifer was without proper parental care and support through no fault of her parents. She was adjudicated a dependent of the state on January 10, 1979. A petition to terminate parental rights for both children was filed on August 10, 1979, alleging that the parents were unable to care for the children, even after months of instruction by department workers. Further, that the parents were mentally and emotionally incapable of assuming the responsibility of child care, were unable to discharge the parental responsibilities because of mental illness or defects, and that the condition would continue for a prolonged, indeterminate period. The termination hearing was held on May 21, 1980. Evidence presented indicated that neither Ann nor Harold Holley's mental conditions had improved to be fit for parenting.

Additionally, the Harold was physically disabled and his condition was unlikely to improve, but more likely to worsen, that he was mildly mentally retarded, functioning at around a 5th grade level, and did not have an appropriate concept of parenting. Additionally, he refused to get out of bed during some visits with his children. Social workers indicated the Holley's did not cooperate with any services and made very little progress in basic parenting skills. During visits they were more interested in interacting with the workers than their children. Finally, evidence suggested that the children were afraid of their parents during visits, showing no affection for either Ann or Harold. The court found it in the best interest of the children to

terminate parental rights.

The Nebraska Supreme Court affirmed. The parents appealed the order terminating their parental rights. The parents first assignment of error was that § 43-209 violated their due process right by failing to require a showing of actual or imminent harm to the child before termination of parental rights. The Court rejected this argument, finding that the only mental deficiency that will suffice for termination is one that renders the parents unable to perform parental responsibilities and requires the court find reasonable grounds to believe the condition will continue for an indeterminate period. Therefore, the statute ties the mental deficiency to the parent's ability to properly raise and care for the child.

In the alternative, the parents argue the statute is unconstitutional because it fails to require the state pursue a least restrictive means before termination. The Court also rejected this argument, finding that the statute did not require termination of parental right, but permitted it, when the statute is satisfied, allowing the court to consider the individual cases, the seriousness of the conduct and condition, attempts to correct the conditions, and determine whether termination is most appropriate. Nothing in the statute prohibits the court from considering and making unique foster-care arrangements. The Court found that the record in this case establishes that the court did terminate the parental as a last resort and had made significant efforts toward reunification.

Finally, the parents argue the court erred in finding clear and convincing evidence that termination was in the best interest of the children. The Court rejected this argument. The Court noted the mental illness of the mother and physical and mental illness of the father that inhibit their abilities to perform their parental duties and responsibilities, such as providing care and safety. Additionally, the Court noted the fact that the children are afraid of their parents. The Court could not find any evidence in the record that it would be in the best interest of the children to allow the Holley's to maintain visitation rights.

Tags

Holley,

Lee,

Jennifer,

Ann,

Harold,

best interest of the child,

43-209,

mental deficiency,

mental illness,

termination of parental rights,

reasonable efforts
